

# **FINDING OF SUITABILITY TO TRANSFER/LEASE**

**(FOST/FOSL)**

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# AGENDA

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- DEFINITION & PURPOSE
- PROCESS
- DOCUMENT FORMAT-MODEL FOST/FOSL
- STAFFING/TIMELINES
- LESSONS LEARNED/SUCCESSSES

## FOST/FOSL DEFINITION & PURPOSE

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### *What Is a FOST or FOSL?*

- A finding , supported by an Environmental Baseline Survey(EBS) and made by an Army Official, of the environmental condition and suitability of a parcel of land to be leased or transferred.

### *What Purpose Do They Serve?*

- A FOST/FOSL allows the environmental community to document the required land condition, lease provisions, restricted land use, covenants, and access clauses based on the environmental condition of the property. FOST/FOSL is then given to the real estate community to properly document in a lease or deed transfer assembly.

# **THE FOST/FOSL PROCESS**

## ***EBS-THE FOUNDATION DOCUMENT***

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- Basewide Survey- “Fence to Fence”
- DOD 7 Conditions of Property
- ID CERFA “Clean”
- Develop Reuse Alternatives

## **THE FOSL PROCESS**

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1. Complete EBS or Update If Necessary
2. Early Notification of FOSL Intent to State/EPA
3. Share Working Drafts
4. Address Comments-attach unresolved
5. Forward for Final Staffing
  - 5.a CERCLA 120(h) (5)-State Notification
6. FOSL Approved
7. FOSL Sent to District for Incorporation in Lease
8. Public Notice of Signed FOSL

## **THE FOST PROCESS**

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1. Complete or Update EBS
2. Notification Of Initiation of FOST- Regulators
3. Evaluation of Finding of Suitability
4. 30-Day Regulatory Review
5. Resolve Comments-Attach Unresolved
6. Forward for Final Approval
7. Approved FOST Sent to District for Incorporation in Deed
8. Notification of Signing of FOST-Public & Regulators
9. Make Signed Copy Available for Public/Regulators

## **FOSL CONTENT**

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1. Purpose-What is Being Leased, Where, To Whom, For What Purpose and for How Long
2. Property Description-Attach Map
3. Environmental Disclosures-EBS Findings-CERCLA 120(h)(1)- Attach Tables as Necessary-Hazardous Substance Storage, Release or Disposal, Time, Quantity
4. Statement of Suitability to Lease - Give Reasons
5. Lease Provisions-Access, Land Restrictions

# **FOSL CONTENT**

## **LEASE PROVISIONS**

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**\*\*Use DOD Standard Lease Provision Language Where Appropriate\*\***

- Notice - IAG, FFA, etc...
- No Disruption of Environmental Actions
- Sub-Lease Responsibilities
- Property Usage/Restrictions
- Access to Property
- Environmental Responsibilities-Federal, State, Local Laws



## **FOST CONTENT**

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1. Purpose-What is Being Transferred, To Whom, and for What Purpose
2. Property Description-Include Map
3. Environmental Disclosures-EBS Findings-CERCLA & Non-CERCLA
4. NEPA Document Completed-1-2 Sentences

## FOST CONTENT (Cont.)

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5. Notices, Covenants, Access Clauses-Also State That These Will Be Put In Deed

5a. Notice-Haz Substance(Type, Quantity, Time)-Table

5b. Covenant-(i) all remedial action has been taken

(ii) any additional remediation, caused by  
Gov.-will be Gov. Responsibility

5c. Clause-Granting Us Access

## FOST CONTENT (Cont.)

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### 6. Finding of Suitability to Transfer

*....On the basis of the above....I conclude that the requirements of CERCLA 120(h) have been met; and subject to the foregoing restrictions and rights to be included in the deed...the subject parcel.....may be transferred to.....*

# **FOST/FOSL STAFFING PROCEDURES**

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**\*\* Use Implementing Guidance-Dated 23 Aug. 95\*\***

- Give Appropriate Notices, Regulatory Review
- Final Staffing-MACOM Env., Legal, Real Estate
- Signature Authority-MACOM Signs DOD ECP 1-3(without UXO)
- If Signed at The Pentagon-ADASA(ESOH)-Send 5 copies DAIM-ED-R for Staffing/Approval-Allow 30 Days(Guidance States 2-Weeks-our goal)
- Send Approved FOST/FOSL to District Real Estate Office
- If MACOM Signs-Mail Signed Copy to HQDA(DAIM-ED-R & DAIM-BO), appropriate EPA and State Office within 14 Days of Approval

## **LESSONS LEARNED/CONCLUSIONS**

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- Start As Early As Possible
- If Signed In Pentagon, Allow 30 Days For Approval
- Use E-Mail to Communicate/Send FOST/FOSL File
- Simpler=Shorter=Faster-10 Pages MAX-4 pgs preferred
- Get The Lawyers Informed
- Use Your BCT Network-People Have Done This Before
- Learn The Process
- Become Friends With Real Estate Folks
- Pray For No More Blizzards in Washington D.C.!